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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/577,854	05/25/2000	Albert A. Burlando	P/4593	8265

7590

07/31/2002

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EXAMINER

SMITH, RICHARD A

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 07/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/577,854

Applicant(s)

BURLANDO, ALBERT A.

Examiner

R. Alexander Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

**REOPENING OF PROSECUTION –  
NEW GROUND OF REJECTION AFTER APPEAL**

1. In view of the Appeal Brief, paper no. 19, filed on 14 May 2002, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (a) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (b) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

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*Claim Objections*

2. Claims 6-8 are objected to because of the following informality: there should be a comma inserted after "about said fire hydrant" in line 11 of claim 6.

*Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 1: "their said ends" in line 16 lacks antecedent basis with respect to the reflective member.

The applicant should note that the antecedent for the ends of the support member is clearly disclosed in line 6 but there is no mention of ends for the reflective member preceding "said support member and said reflective member having... ..proximate their said ends" in lines 14-16.

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Claim 6: "their said ends" in line 24 lacks antecedent basis with respect to the reflective member.

The applicant should note that the antecedent for the ends of the support member is clearly disclosed in line 15 but there is no mention of ends for the reflective member preceding "said support member and said reflective member having... ...proximate their said ends" in lines 22-24.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson et al. in view of Hodgson et al. and Hughes, Jr.

Simpson et al. discloses a reflective warning and locating collar comprising a support member having an elongated flexible web having a first side and a second side, (the embodiment of the first side 34 shown in figure 2 with the second side employing the alternate mounting

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means taught in figure 5), said web having flanges (32 and 33) depending from the longitudinal edges of said first side of the web, said flanges being parallel to the web thereby defining a channel, a reflective member comprised of an elongate flexible web (the reflective tape of figures 6a-6d) and a fastening means for said support member (locking tape to be applied proximate the first and second ends of the support member), the support member being a weather resistant polymer (plastic), and a fire hydrant with the limitations of claim 6.

Simpson et al. does not teach the support member being extruded, the flanges having inwardly turned second flanges to define said channel as a channel between the web and the second flanges, the reflective member comprising said web being slidably received and retained within the channel, and said members having a plurality of alignment apertures proximate their said ends for alignment and receipt of a fastening means and the limitations of claim 8.

Hodgson et al. discloses a collar (figure 20) comprising a support member having a first side having flanges having inwardly turned second flanges to define a channel between the second flanges and the first side along the length of the support member and a substrate member comprising a web with a message being printed or embodied thereon, said substrate member being slidably received and retained within the channel (column 5, lines 51+) in order to adjust the message conveyed by the collar accordingly and to allow easy replacement of the message. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the channels and the reflective member, taught by Simpson et al., by adding the second flanges and by bonding a substrate to the reflective tape member in order to help it slide, as suggested by Hodgson, in order to allow the reflective member to be easily slid within

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the collar and to help prevent tape misaligned or wrinkling during application to the hydrant and in order to make the change out of the reflective member easier when it needs to be replaced.

Hughes, Jr. discloses a reflective member having a plurality of alignment apertures proximate its ends for alignment and receipt of a fastening means in order to obviate the need for adhesive tape which tends to make cleanup of adhesive and application of replacement reflective members difficult and expensive. The fastening means (in this case, plastic ties) are used in the alignment apertures in order to secure the ends of the reflective member to each other around a barricade with channels without the need of fastening the reflective member directly to the barrel (e.g., by rivets through the member and the barrel as also disclosed by Hughes, Jr.) Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the locking tape, taught by Simpson et al, with the plurality of alignment apertures and the fastening means, as taught by Hughes, Jr., to ends of the support member in order to hold the support member securely around the hydrant without adhesive tape, or screws and rivets being placed in the fire hydrant; and to add the plurality of alignment apertures and the fastening means, as suggested by Hughes, Jr., to the ends of the reflective members within the channels, taught by Simpson et al., in order to help prevent the ends from slipping out of the channel and to help prevent vandals from removing the reflective members.

With respect to claim 8: Hughes, Jr. discloses a plurality of reflective members being mounted at various heights on a barricade. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to add a second collar, as suggested by Hughes, Jr., to the hydrant, taught by Simpson et al., in order to increase the hydrant's visibility.

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With respect to claim 8 and the second reflective warning and locating collar being positioned about said fire hydrant beneath said extending hose connections: It would have been obvious to one having ordinary skill in the art at the time of the invention was made to position a second collar beneath the extending hose connections since it has been held that rearranging parts of an invention involves only routine skill in the art, In re Japikse 86 USPQ 70, and since Hughes, Jr. already discloses said plurality of collars wherein each collar is at a different height.

With respect to the elongated flexible web being extruded: It would be obvious with respect to the web being extruded as being merely manufacturing choices based on the preferences of the user or manufacturer. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to extrude the web, taught by Simpson et al., based on preferences of a user or manufacturer. In this case to save on manufacturing costs when providing a long continuous flexible support member that can be later subdivided to the needed length according to the user's needs.

### ***Response to Arguments***

7. Applicant's arguments filed 14 May 2002 have been considered but are moot in view of the new ground(s) of rejection.



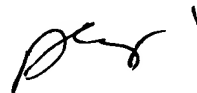
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*Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related collars and hydrants.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Smith whose telephone number is (703) 305-0647. The examiner can normally be reached on Monday-Friday from 9:00 AM to 5:30 PM.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.



Diego Gutierrez  
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RAS  
July 26, 2002